

RECEIVED

Dec 06 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2021-000827

Aretha Elizabeth Bennett,

Appellant,

v.

Theola Pitts and Colleton County School District,

Respondents.

REPLY BRIEF OF APPELLANT

/s/William L. Pyatt

William L. Pyatt, SC Bar No. 4599

Post Office Box 12041

Columbia, South Carolina 29210

pyattlawfirm@gmail.com

(803) 750-5929

Attorney for Appellant

December 6, 2021

TABLE OF CONTENTS

Table of Authorities2

Argument3

Conclusion5

TABLE OF AUTHORITIES

CASES

Dillon Co. Sch. Dist. Two v. Lewis Sheet Metal
286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct.App. 1985).....3, 4

Scanwell Logistics v. VIS, LLC
No. 2018-CP-2304175, 270098\79725478.v2, SC 13th Cir., (Nov. 30. 2018)4

Walker Manufacturing Co. v. Dickerson, Inc.
560 F. (2d) 1184 (4th Cir.1977), appeal after remand, 619 F. (2d) 305 (4th Cir.1980).4

STATUTES

South Carolina Rules of Civil Procedure, Rule 56(c).....4

ARGUMENT

I. The Court should reject Respondent’s argument that Appellant failed to establish sufficient facts to justify the use of equitable tolling, because the issue of fact should be determined by a jury.

The doctrine of equitable tolling may be applied when the aggrieved party relied on the actions of the defendant to delay “The question of whether a defendant’s conduct lulled a plaintiff into a false sense of security and thereby statutory period is ordinarily one of fact for a jury to determine.” *Dillon Co. Sch. Dist. Two v. Lewis Sheet Metal*, 286 S.C. 207, 219, 332 S.E.2d 555, 561 (Ct.App. 1985), cert. dismissed, 288 S.C. 468, 343 S.E.2d 613 (1986). Nevertheless, the issue was decided by the court of common pleas based on Respondents’ motion for summary judgment. In considering whether the court of common pleas was correct in granting Respondents’ motion for summary judgment, “we are required to construe all ambiguities, conclusions, and inferences arising from the evidence most strongly against the Respondents.” *Id.*

The Appellant provided the letter to Respondent on March 29, 2018 and received a letter from Respondent’s insurance adjuster on April 17, 2018. Regardless of Respondents’ assumptions, Appellant “could reasonably infer from the correspondence” that the matter would be resolved without litigation. *Id.* It is common for parties to settle for less than what they originally demanded. The fact that Respondent’s adjuster increased its settlement offer was a positive indication that negotiations were forthcoming, and litigation would not be necessary. Respondents’ claim that Appellant’s beliefs were not reasonable, but reasonable men may differ on the issue of equity. *Id.* citing *Walker Manufacturing Co. v. Dickerson, Inc.*, 560 F. (2d) 1184 (4th Cir.1977), appeal after remand, 619 F. (2d) 305 (4th Cir.1980).

As stated by the South Carolina Court of Appeals, lawsuits are “subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff.” *Scanwell Logistics v. VIS, LLC*, No. 2018-CP-2304175, 270098\79725478.v2, SC 13th Cir., (Nov. 30. 2018). Here, Appellant was diligent in her efforts to seek justice for her damages caused by Respondents. She communicated her concerns to staff and higher authorities at Colleton County School District and ultimately sought legal counsel. Respondents focus their argument on a lack of extraordinary circumstances, but it must be acknowledged that extraordinary circumstances are not “an exclusive list of circumstances that justify the application of equitable tolling.” *Id.* The dismissal of Appellant’s case at this point in litigation would be inequitable, unjust, and against the fundamental practicality and fairness of the court system. *Id.*

Construing all of the conclusions, inferences, and evidence most strongly against the Respondents, Appellant reasonably relied on the correspondence and negotiations with to settle her claims without litigation. Whether Respondents’ conduct caused Appellant’s reliance, and hence applies the doctrine of equitable tolling, is a genuine issue of material fact that should have been determined by a jury. South Carolina Rules of Civil Procedure, Rule 56(c) Thus, the Order granting Respondents’ motion for summary judgment should be reversed.

In fact, Appellant’s reasonable belief and expectations is an appropriate matter for the jury to decide and is indeed a question of fact for the exclusive province of a jury.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's granting of summary judgment for the Respondents and that they be estopped from asserting the statute of limitations as an affirmative defense.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2021-000827

Aretha Elizabeth Bennett,

Appellant.

vs.

Theola Pitts and Colleton County
School District,

Respondents,

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal on Theola Pitts by sending a copy via electronic mail on December 6, 2021, addressed to her attorney of record, Margie Bright Matthews, at Margie@brightmatthewslaw.com

/s/William L. Pyatt

William L. Pyatt, SC Bar No. 4599

Post Office Box 12041

Columbia, South Carolina 29210

pyattlawfirm@gmail.com

(803) 750-5929

Attorney for Appellant

December 6, 2021

RECEIVED
Dec 06 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2021-000827

Aretha Elizabeth Bennett,

Appellant.

vs.

Theola Pitts and Colleton County
School District,

Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Reply Brief and Designation of Matter to be Included in the Record on Appeal on Colleton County School District by sending a copy via electronic mail on December 6, 2021, addressed to its attorney of record, Peden Brown McLeod, Jr., at brownmcleod@mfcclawfirm.com.

/s/William L. Pyatt

William L. Pyatt, SC Bar No. 4599

Post Office Box 12041

Columbia, South Carolina, 29210

pyattlawfirm@gmail.com

(803) 750-5929

Attorney for Appellant

December 6, 2021

RECEIVED
Dec 06 2021
SC Court of Appeals